

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIMOTHY TAYLOR,)	
)	
Plaintiff,)	
)	Civil Action No. 1:21-cv-03046-JSR
v.)	
)	
DISCOVERY, INC. and)	JURY TRIAL DEMANDED
THE EXPLORERS CLUB,)	
)	
Defendants.)	
)	
and)	
)	
THE EXPLORERS CLUB,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
SYLVIA EARLE and THE SYLVIA EARLE)	
ALLIANCE d/b/a MISSION BLUE,)	
)	
Third-Party Defendants.)	
)	

**DEFENDANT/THIRD-PARTY PLAINTIFF THE EXPLORERS CLUB’S
THIRD-PARTY COMPLAINT AGAINST THIRD-PARTY DEFENDANTS
SYLVIA EARLE AND THE SYLVIA EARLE ALLIANCE D/B/A MISSION BLUE**

Defendant/Third-Party Plaintiff The Explorers Club, for its Complaint against Third-Party Defendants Sylvia Earle (“Ms. Earle”), and the Sylvia Earle Alliance d/b/a Mission Blue (“Mission Blue”) (collectively “Defendants”) states as follows:

Introduction

1. Plaintiff Timothy Taylor filed an original Complaint in this action against The Explorers Club for willful and non-willful copyright infringement, fraud/misrepresentation, for

violations of the Digital Millenium Copyright Act (“DMCA”), and pursuant to the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

2. Plaintiff Timothy Taylor claims that The Explorers Club’s alleged use of his Work constitutes copyright infringement.

3. Third-Party Defendants provided the Work to The Explorers Club to use, representing that The Explorers Club could use the Work in the creation of media promoting the achievements of women in exploration, including Ms. Earle, and inducing The Explorers Club’s use of the Work. The Explorers Club brings the third party claim below for breach of contract by Defendants to compensate it for any damages, including attorneys’ fees and costs, sustained by The Explorers Club in Plaintiff Timothy Taylor’s action.

Parties

4. The Explorers Club is a nonprofit New York corporation having a principal place of business located at 46 East 70th Street, New York, New York 10021.

5. On information and belief, Sylvia Earle is a California resident currently residing at 12812 Skyline Blvd., Oakland, California 94619.

6. On information and belief, the Sylvia Earle Alliance is a nonprofit California corporation having a principal place of business located at 1048 Stonybrook Dr., Napa, California 94559.

7. On information and belief, Mission Blue is the assumed name under which the Sylvia Earle Alliance conducts business.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction over The Explorers Club's claims under 28 U.S.C. § 1332 because complete diversity exists between The Explorers Club, and Sylvia Earle and The Sylvia Earle Alliance, d/b/a Mission Blue, and the alleged amount in controversy exceeds the applicable jurisdictional amount of \$75,000, exclusive of interest and costs.

9. This Court also has subject matter jurisdiction over The Explorers Club's claims under 28 U.S.C. § 1367(a) because The Explorers Club's claims are so related to Plaintiff Timothy Taylor's claims that they form part of the same case or controversy under Article III of the United States Constitution.

10. This Court has personal jurisdiction over the Defendants because the Defendants transacted business in New York by contracting with The Explorers Club in this judicial district or otherwise established contacts here such that the exercise of personal jurisdiction is proper.

11. This Court also has personal jurisdiction over Defendants because each of the Defendants have committed tortious acts in this judicial district or otherwise established contacts here such that the exercise of personal jurisdiction is proper.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted in the Complaint occurred in this judicial district.

Facts Common to All Counts

13. Founded in New York City in 1904, The Explorers Club is an international multidisciplinary professional society dedicated to the advancement of field research and the idea that it is vital to preserve the instinct to explore.

14. Since its inception, The Explorers Club has served as a meeting point and unifying force for explorers and scientists worldwide. The Explorers Club's members have been responsible for an illustrious series of famous firsts: to the north pole, to the south pole, to the summit of Everest, to the deepest point in the ocean, and to the surface of the moon.

15. The Explorers Club actively encourages public interest in exploration, explorers, and the sciences through its public lectures program, publications, travel programs, and other events.

16. The Explorers Club requested that Ms. Earle provide images or videos of herself that The Explorers Club could use to create media promoting women in exploration. In exchange, one or more of the photographs or videos would be included in media promoting the achievement of women explorers and the 40th anniversary celebration of the first women in The Explorers Club. *See* Ex. 1.

On Jan 6, 2021, at 10:30 AM, Catherine Cooke <catherinencooke@hotmail.com> wrote:

Dear Sylvia,

Happy 2021...and thank you again for such a wonderful interview last month. As promised, here is a list of images that we would like to use in the film we are producing, as well as in upcoming print articles and (hopefully) other media promotion of women in exploration that will occur during this 40th anniversary year celebrating our first EC women.

I know the Club has MANY images of you, and we had hoped to avoid asking you for additional ones. Unfortunately because of Covid-19, accessing them remotely has proven a challenge (and our archivist is currently a victim of the virus, slowly recovering). Knowing you are wrapping up your new *Atlas of the Oceans*, I send huge apologies for any inconvenience...and will be happy to work with anyone on your team (Liz?) to help secure them. **THE BAD NEWS IS WE NEED THEM BY JANUARY 18 SO THE EDITOR CAN START WORKING....please don't hate me 😊!**

SUGGESTION FOR IMAGES (Stills and/or video...and we certainly don't need ALL of these....they are just suggestions that capture what we talked about on 12/8):

- A couple of favorite stills of just you....both in underwater action and in your various leadership roles (NOAA, the deep-sea equipment companies you founded, NGS)
- One or two of you as a youngster, exploring the New Jersey woods or shore, or on the beach as a teenager in Florida....these would be special 😊, but maybe hard to find?
- Photo making your JIM suit dive in 1979
- Receiving your Lowell Thomas Award (any with Carl Sagan or Charles Brush?)
- Early expeditions with mostly male colleagues (Indian Ocean? Tektite?)
- Hero of the Planet...or Rolex Hero?
- In action with school kids in Monterrey Bay (maybe some video?)
- One of you with your children....carrying on the legacy, as you discussed so well!
- Founding of Mission Blue
- Any video of a particularly beautiful dive amongst the creatures of the deep
- Any other images that you would like included

I hope all of this is not too daunting! Again, you are a treasure and we thank you.

Catherine

Catherine Nixon Cooke (210-601-3702)

17. Brett Loveman, Mission Blue's Director of Communications, provided The Explorers Club with a link to a Dropbox account containing "a wealth of photography for [The Explorers Club] to choose from." See Ex. 1.

On Jan 7, 2021, at 2:35 PM, Brett Loveman <bloveman@mission-blue.org> wrote:

Hi Martha,

I hope this email finds you well! Please find [here](#) a wealth of photography for you to choose from. Tons of goodies in there!

Sean, copied, is looking to see if we have any footage that meets the mark. Thank you,

Brett

Brett Loveman
Director of Communications



P.O. Box 6882
Napa, California 94581
bloveman@mission-blue.org

18. This email exchange constituted a written contract – express and/or implied – wherein Defendants agreed to provide The Explorers Club with photographs that The Explorers Club could freely use in the creation of media promoting women in exploring, in exchange for the use of the photographs to publicize women explorers, including Ms. Earle and by extension, Mission Blue.

19. The Explorers Club contemplated use and distribution of the photographs, as well as the subsequent use and distribution by Discovery, would inure to the benefit of Ms. Earle and Mission Blue, as it would honor her life's work, generate favorable publicity for Defendants, and lead to increased funding due to such favorable publicity.

20. Upon information and belief, by providing the link granting access, and indicating that The Explorers Club could select and use any of the photographs contained therein, Defendants expressed, implied, represented, misrepresented, negligently misrepresented, and/or authorized The Explorers Club's use of said photographs, including the Work at issue in this action.

21. One of the photographs contained in the Dropbox account is the Work asserted in this action.

22. Absent the actions, inactions, and/or statements by Defendants alleged herein, The Explorers Club would neither have had access to the photographs, including the Work asserted in this action, nor used the Work as alleged in Plaintiff Tim Taylor's Complaint.

23. The damages and other harm that The Explorers Club may be liable for in this action, including alleged monetary damages, attorneys' fees, and costs, were reasonably foreseeable to the Third-Party Defendants at the time they provided access to, and the Work, to The Explorers Club.

Count I – Breach of Express Contract

24. The Explorers Club re-alleges and incorporates by reference the foregoing paragraphs of this Complaint as though fully set forth under this Count.

25. The above-described contract constituted an express written contract.

26. By providing The Explorers Club with, and representing and authorizing The Explorers Club's use of, Plaintiff Timothy Taylor's alleged copyrighted Work, Defendants breached the Contract by providing a photograph that upon information and belief, apparently Defendants lacked permission or license to provide to The Explorers Club.

27. The Explorers Club performed all of its obligations under the Contract.

28. Should The Explorers Club be found liable for infringement of Plaintiff Timothy Taylor's Work, The Explorers Club will suffer financial loss and/or damages as a result of Defendants' breach.

29. The Explorers Club is entitled to recover from the Defendants the loss and/or damages, including attorney's fees and costs, that Explorers Club has sustained and will sustain.

30. At present, the amount of such damages cannot be fully ascertained, but will be established according to proof at trial.

Count II – Breach of Implied Contract

31. The Explorers Club re-alleges and incorporates by reference the foregoing paragraphs of this Complaint as though fully set forth under this Count.

32. The above-described email exchange constitutes an implied written contract because, based on the conduct of The Explorers Club and Defendants, the parties impliedly agreed to enter into a contract wherein Defendants would provide The Explorers Club with photographs that The Explorers Club could freely use in the creation of media promoting women in exploring,

which would enure to the benefit of Defendants by honoring Ms. Earle's life's work, generate favorable publicity for Defendants, and lead to increased funding due to such favorable publicity.

33. By providing The Explorers Club with, and representing and authorizing The Explorers Club's use of, Plaintiff Timothy Taylor's alleged copyrighted Work, Defendants breached the Contract by providing a photograph that Plaintiff Timothy Taylor now alleges Defendants lacked permission or license to provide to The Explorers Club.

34. The Explorers Club performed all of its obligations under the Contract.

35. Should The Explorers Club be found liable for infringement of Plaintiff Timothy Taylor's Work, The Explorers Club will suffer financial loss and/or damages as a result of Defendants' breach.

36. The Explorers Club is entitled to recover from the Defendants the loss and/or damages, including attorney's fees and costs, that Explorers Club has sustained and will sustain.

37. At present, the amount of such damages cannot be fully ascertained, but will be established according to proof at trial.

Jury Demand

Pursuant to Fed. R. Civ. P. 38, The Explorers Club hereby demands a trial by jury on all claims and issues so triable.

Prayer for Relief

WHEREFORE, The Explorers Club respectfully requests that the Court enter judgment as follows:

A. That this Court enter judgment in favor of The Explorers Club on Counts I-II;

- B. That any damages, including attorney's fees and costs incurred by The Explorers Club as a result of this action be paid, indemnified, reimbursed, or contributed to by Defendants; and,
- C. That this Court award such further relief to which The Explorers Club may be entitled under the circumstances.

Date: June 15, 2021

Respectfully submitted,

Thompson Coburn LLP

By: /s/ Michael L. Nepple
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*Attorney for Defendant
The Explorers Club*

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2021, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

/s/ Michael L. Nepple